

REMARKS

Claims 1-10, 12-13 and 15-23 remain pending in the present application and have been amended in a way that is thought by Applicants to clearly overcome the art of record with the full support of the specification. Claims 11 and 14 have been canceled. Further amendments have been made in the claims in order to address the Examiner's § 112 concerns. It is believed that these amendments overcome the Examiner's concerns. Applicant hereby reserves the right to present claims of the original scope in continuing Applications.

Applicant appreciates the Examiner's review of the Application.

The § 102 Rejections

The Examiner rejected claims 1-4 and 6-23 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent no. 3,399,780 issued to Macaluso, Jr., et al (hereinafter the '780 patent). Applicant respectfully disagrees in view of the amendments above and for the reasons as set forth in the discussions which follow immediately hereinafter.

Claim 1 has been amended to recite an apparatus for use in association with a cup for aiding a user in identifying that cup, said cup having an opening that is defined by an enlarged, annular peripheral rim having a rim curvature extending around the opening. The apparatus includes a body having an attachment portion configured for engaging at least a part of the enlarged, annular peripheral rim in a way which supports the body on the cup. Further limitations have been added which reflect the limitations of now canceled original claim 11. In particular, the attachment portion has an arcuate configuration to conform with the rim curvature. With respect to these latter limitations, the rejection of original claim 11 states that the inverted U shape of the attachment portion is curved to approximately conform to the rim curvature. Applicant respectfully disagrees.

It is noted that the configuration of interest is clearly illustrated in Figure 2D of Applicant's disclosure. That is, the attachment portion defines a curvature which at least approximately conforms to the rim curvature of the cup. The '780 patent, in contrast, includes a pair of gripping elements 20 that are described, in part, at col. 2, ln. 58, carrying over to col. 3, ln. 13, as follows:

The resilient clip element, in the embodiment shown in FIGS. 1 through 5, is of generally inverted U configuration having partially closed ends of the U merging toward each other to form ribs 22 and can be considered as a tubular element having an open wall for snap entry of the glass lip into the tubular configuration. The length of the tubular configuration is sufficient to maintain resilient pressure on the walls of the tubular portion by the curved configuration of the glass lip. Thus, the length of the tubular configuration is sufficient to engage the inner surface of the curved glass rim at spaced apart positions at each end of the tubular configuration and to engage the outer surface of the rim intermediate those spaced positions. The lip engaging ribs 22 snap over the glass rim, e.g. a beaded rim or a plain rim, and lock onto the glass walls. It will be noted that the engaging and locking element 20 has generally flat opposing surface

portions as best seen in FIG. 6 and, as seen in FIG. 7, the lengthwise extent of these surfaces across the width of the arm 18 is sufficient to cause a force tending to open the clip element via the curvature of the glass rim when the clip element is snapped onto the lip of the glass. (emphasis supplied)

Initially, it is noted that the U shape, that is referenced, refers to the lengthwise shape of gripping elements 20, it does not refer to their width. With respect to the width of the gripping elements, Applicant believes that it is clear from the foregoing passage that the gripping elements define a straight tubular configuration for receiving the rim of a glass for a number of reasons. First, the length of the tube, as set forth in the passage, could not apply pressure to the glass in the described manner if it were curved to match the rim curvature of the glass. The described contact with two spaced apart positions on the inner surface of the rim and an intermediate position on the outer surface of the rim occurs, however, if the tubular configuration is straight and the glass rim is curved. Second, the passage affirmatively states that element 20 has generally flat opposing surface portions, which is entirely consistent with the statements regarding how this structure contacts the rim of the glass. Third, the width of the element causes a force that tends to open the element as a result of contacting the lip of the glass rim which is, once again, entirely consistent with the described "flat" configuration. Accordingly, Applicant believes that the '780 patent fails to teach, suggest or disclose an attachment portion having an arcuate configuration which is capable of conforming to the rim curvature of a glass. In fact, Applicant believes that the '780 patent teaches exactly the opposite. Specifically, the '780 patent teaches a clip configuration that is straight in the plane of the opening of the glass, so that the clip engages the rim of the glass as described, at two spaced apart positions on the interior of the glass and at an intermediate position on the exterior of the glass. Accordingly, it is respectfully submitted that claim 1, as amended, is allowable over the '780 patent for at least these reasons.

Claims 2-4, 6-10, 12, 13, and 15-16, as amended, each depend either directly or indirectly from and therefore include the limitations of claim 1. Accordingly, it is respectfully submitted that each of these claims is also patentable over the art of record for at least the reasons set forth above with respect to claim 1. Further, each of these dependent claims places additional limitations on their parent and intermediate claims which, when considered in light of claim 1, further distinguish the claimed invention from the art of record.

For example, claim 2, as amended, recites that the attachment portion defines at least one rim receiving aperture for slidably capturing an engaged part of the enlarged, annular peripheral rim such that the body of the apparatus can move in sliding engagement around the rim. With regard to these limitations, the '780 patent teaches a clamping arrangement that engages two spaced apart positions on the interior of a glass and an intermediate position on the exterior. Further, at col. 3, lns. 5-6 and lns. 29-30, the '780 patent describes the function of its gripping element as locking to the glass wall and glass rim. Clearly, this is the opposite of the claimed subject matter. Claim 3, as amended, depends from claim 2 and further requires that the attachment

portion defines an arcuate entrance opening whereas the '780 patent teaches a straight configuration based on its "flat" surfaces, as described above, and its straight tubular configuration. Applicant respectfully submits that the art of record is devoid of the recited features when viewed in a reasonable light. Accordingly, allowance of claims 2 and 3, as amended, is respectfully requested.

As another example, claim 6 has been amended to recite that the enlarged annular peripheral rim of the cup includes an inner periphery and an outer periphery. The attachment portion is configured having a first portion adjacent to the inner periphery and a second portion adjacent to the outer periphery such that the first portion and the second portion are in a non-confronting relationship across the enlarged annular peripheral rim. Gripping element 20 of the '780 patent, in contrast, is of a uniform width and cross-sectional shape. Moreover, the described U shape is consistent across the width of the gripping element so that it defines a confronting relationship across its entire width. Accordingly, for at least these reasons, allowance of amended claim 6 is requested.

As still another example, claim 7, as amended, depends from claim 6 and further requires that the first portion includes a spaced apart pair of tabs, each of which is formed to receive a cross sectional shape of the enlarged annular peripheral rim and the second portion includes a protrusion that cooperates with the tabs to define the arcuate configuration. The '780 patent, in contrast, shows a pair of spaced apart gripping elements that are entirely separate from one another and do not themselves include spaced apart tabs. Further, a protrusion is not used to cooperate to define the arcuate configuration in the recited manner. Claim 8 depends directly from claim 7 and further recites that the cup includes an inner sidewall and an outer sidewall, each of which is delimited by the enlarged annular peripheral rim. The protrusion is positioned at least approximately laterally equidistant from each of the tabs and projects toward the outer sidewall from exterior thereto. It is respectfully submitted that the '780 patent is devoid of these features when viewed in a reasonable light. Accordingly, for at least these reasons, allowance of amended claims 7 and 8 is respectfully requested.

As yet another example, claim 9 depends from amended claim 7 and further recites that the cup includes a sidewall extending to the rim, and the sidewall includes a sidewall thickness, wherein the enlarged, annular peripheral rim includes a rim thickness which is greater than the sidewall thickness, and wherein the attachment portion defines an entrance opening leading into the rim receiving aperture having an entrance opening width that is less than the rim thickness of the enlarged, annular peripheral rim and each tab includes a distal end. The protrusion is configured to cooperate with the distal end of each tab to define the entrance opening in the non-confronting relationship. It is respectfully submitted that the '780 patent fails to teach these features when viewed in a reasonable light. Accordingly, for at least these reasons, allowance of amended claim 9 is respectfully requested.

As a further example, Claim 10 depends from amended claim 3 and further recites that the attachment portion is configured for slidably engaging the enlarged, annular peripheral rim without a need for a continuous biasing force on the enlarged, annular peripheral rim. The '780 patent, in contrast, requires a continuous grip from its gripping elements 20 in order to lock these elements to the glass, as is described above, with respect to the patentability of claim 1. It is respectfully submitted that these features are not taught by the '780 patent. The application of such force is considered as disadvantageous, particularly with respect to disposable cups where continuous pressure can deform the rim, creating a weak spot which may result in the collapse of the opening of the cup. Accordingly, for at least these reasons, allowance of claim 10 is respectfully requested.

As a continuing example, claim 12, as amended, recites that the cup includes an inner sidewall and an outer sidewall, each of which is delimited by the enlarged annular peripheral rim and wherein the body further includes an identification portion that is connected with the attachment portion and is positioned proximate to the outer sidewall when the attachment portion engages the enlarged peripheral rim. The '780 patent describes a horizontal portion 14 that can be printed with advertising and does not mention identification. Further, this portion is within the interior of the glass and can be covered by liquid, thereby defeating any reasonable attempt at identification using this horizontal portion. In this regard, claim 15 depends from claim 12 and further recites that the identification portion is outside of the cup interior. Accordingly, allowance of amended claims 12 and 15 is respectfully requested.

Claim 17 is an independent claim which includes certain limitations that have been discussed above, for example, with respect to claim 10. In particular, the attachment portion is configured such that there is no need for a continuous biasing force on the enlarged, annular peripheral rim. The '780 patent, in contrast, requires a continuous grip from its gripping elements 20 in order to lock these elements to the glass, as is described above, with respect to the patentability of claim 1. Hence, it is respectfully submitted that the features recited by claim 17 are not taught by the '780 patent. Accordingly, allowance of claim 17 is respectfully requested.

Claims 18 and 19 each depend directly from and therefore include the limitations of claim 17. Accordingly, it is respectfully submitted that each of these claims is also patentable over the art of record for at least the reasons set forth above with respect to claim 17. Further, each of these dependent claims places additional limitations on their parent and intermediate claims which, when considered in light of claim 17, further distinguish the claimed invention from the art of record.

For example, claim 18 recites that the attachment portion is configured for slidably engaging part of the enlarged, annular peripheral rim. It is noted that this feature has been addressed above, for example, with respect to claim 2. Accordingly, the arguments above in favor of the patentability of this feature over the art of record with respect to claim 2 are considered to have equal applicability with respect to claim 18. Accordingly, for at

least these reasons, allowance of claim 18 is respectfully requested.

As another example, claim 19 recites that the cup includes a sidewall connected with the enlarged, annular peripheral rim, which sidewall includes an interior surface and an exterior surface and wherein the body further includes an identification portion that is connected with the attachment portion. The identification portion is configured such that it is disposed adjacent to the exterior surface of the sidewall when the attachment region is in engagement with said enlarged, annular peripheral rim. It is noted that this feature has been addressed above, for example, with respect to claim 12. Accordingly, the arguments above in favor of the patentability of this feature over the art of record with respect to claim 12 are considered to have equal applicability with respect to claim 19. Accordingly, for at least these reasons, allowance of claim 19 is respectfully requested.

Claim 20 is an independent claim which has been amended to include certain limitations that reflect the limitations of amended claim 1. For example, amended claim 20 now recites that the attachment portion has an arcuate configuration that at least approximately conforms to the rim curvature of the cup. It is noted that this feature has been addressed above, for example, with respect to claim 12. Accordingly, the arguments above in favor of the patentability of this feature over the art of record with respect to claim 1 are considered to have equal applicability with respect to claim 20. Accordingly, for at least these reasons, allowance of claim 20 is respectfully requested.

Claim 21 is an independent claim which has been amended to reflect the limitations of claim 1, but in method form. Accordingly, it is believed that the arguments made above in favor of the patentability of claim 1 over the art of record are equally applicable with respect to the patentability of claim 21, as amended. Accordingly, allowance of amended claim 21 is respectfully requested.

Claim 22 is an independent claim which reflects the limitations of claim 17, but in method form. Accordingly, it is believed that the arguments made above in favor of the patentability of claim 17 over the art of record are equally applicable with respect to the patentability of claim 22. Accordingly, allowance of claim 22 is respectfully requested.

Claim 23 is an independent claim which has been amended to reflect the limitations of claim 20, but in method form. Accordingly, it is believed that the arguments made above in favor of the patentability of claim 20 over the art of record are equally applicable with respect to the patentability of claim 23, as amended. Accordingly, allowance of amended claim 23 is respectfully requested.

The § 103 Rejections

The Examiner rejected claim 5 under 35 USC 103 as being unpatentable over the '780 patent, asserting that the '780 patent discloses the invention except for the flexing of the cup. Applicant respectfully traverses, as will be discussed hereinafter in view of the amendments above.

Claim 5, as amended, depends directly from amended claim 1 and, therefore, includes its limitations. Accordingly, it is respectfully submitted that claim 5 is also patentable over the art of record for at least the reasons set forth above with respect to amended claim 1. Further, claim 5 places additional limitations on amended claim 1 which, when considered in its light, further distinguish the claimed invention from the art of record. Further, Applicant considers that there are additional reasons which compel the allowance of claim 5 over the art of record, as will be discussed immediately hereinafter.

Amended claim 5 recites that the arcuate configuration of the attachment portion is further configured to resiliently deform responsive to flexing of the enlarged, annular peripheral rim. The '780 patent describes gripping elements that define a linear tube for grippingly engaging and locking onto the rim of a glass, as discussed above, with reference to the patentability of claim 1. Thus, the gripping elements appear to be rigid in order to apply the contemplated gripping force. Applicant is unable to find any teaching, motivation or suggestion which would reasonably lead one to modify the gripping elements to have a more flexible configuration, responsive to flexing of the rim of a glass. Further, if such modification were made, Applicant believes that the gripping elements would be unsuitable for their intended purpose and would result in a device that is inoperable for its intended purpose. Accordingly, for at least these reasons, allowance of claim 5 is respectfully requested.

For the foregoing reasons, it is respectfully submitted that all of the Examiner's objections have been overcome and that the application is in condition for allowance. Hence, allowance of these claims and passage to issue of the application are solicited.

If the Examiner has any questions concerning this case or believes that a telephone interview would expedite the prosecution of the case, the Examiner is respectfully requested to contact Mike Pritzkau at 303-410-9254.

Respectfully submitted,
/Michael M. Pritzkau/
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